

STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION
FOR BENEFICIAL WATER USE PERMIT
NO. 2176-s41S, BY
FRED D. COLVER

FILMED FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER
APR 6 1990

The Proposed Findings of Fact and Conclusions of Law in this matter entered on February 26, 1975, by the Hearing Examiner are hereby adopted as the Final Findings of Fact, Conclusions of Law and Final Order is hereby ordered.

ORDER

The Applicant's permit is granted subject to:

1. All Prior existing water rights, and
2. Installation of a drainage device: If it becomes necessary to release water from the pit to satisfy prior existing water rights, the Applicant will use a portable pump to release water from the pit.

Done this twenty-fourth day of March, 1975.

Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

CASE # 2176

BEFORE THE DEPARTMENT
OF
NATURAL RESOURCES AND CONSERVATION

IN THE MATTER OF THE APPLICATION)
FOR BENEFICIAL WATER USE PERMIT)
NO. 2176-s41S, FRED D. COLVER)

PROPOSAL FOR DECISION

Pursuant to the Montana Water Use and Administrative Procedure Acts, after due notice, a hearing was held on December 11, 1974 at Lewistown, Montana for the purpose of hearing objections to the above-named Application. The Applicant, Fred D. Colver appeared at the hearing and presented testimony. He was represented by counsel, Mr. Robert Foster, esq. of Lewistown, Montana. Mr. Alan C. Folda and Mr. Robert D. Keller filed timely objections to the application. Mr. Alan Folda was represented by counsel, Mr. William Spoja, esq. of Lewistown, Montana. Mr. Keller was represented by counsel, Mr. Peter L. Rapkoch, esq. of Lewistown, Montana. Mr. Keller appeared at the hearing and upon seeing the proposed reservoir site on an aerial photographic map introduced into evidence by the Applicant, took the witness stand and withdrew his objection to the application.

PROPOSED FINDINGS OF FACT

1. On May 2, 1974, the Applicant submitted an Application for Beneficial Water Use Permit seeking to appropriate 2 acre-feet of water per year for the purpose of stockwater. The water is to be impounded in an earthen pit reservoir in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35, T.17N., R.18E. in Fergus County, Montana.
2. The Applicant testified that the dam would help to stop erosion, and that there are unappropriated waters in Warm Spring Creek.
3. Mr. Alan Folda took the stand and testified that his prior existing water right was 3 miles upstream and would not be adversely affected by the proposed dam, but said he wished to establish his water right in case of a dispute between himself and appropriators downstream to the applicant's point of diversion.

PROPOSED CONCLUSIONS OF LAW

1. The evidence tended to indicate that approval of this application would not adversely affect the objectors' prior existing water rights.

PROPOSED ORDER

The Applicant's permit be granted subject to:

1. All prior existing water rights.
2. Installation of a drainage device: If it becomes necessary to release water from the pit to satisfy prior existing water rights, the Applicant will use a portable pump to release water from the pit.

Dated this 26th day of February, 1975.

James A. Lewis
HEARING EXAMINER--JAMES LEWIS

BEFORE THE DEPARTMENT
OF
NATURAL RESOURCES AND CONSERVATION

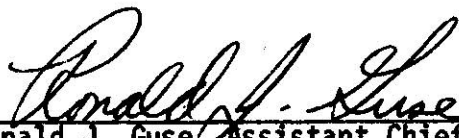
IN THE MATTER OF APPLICATION)
FOR BENEFICIAL WATER USE)
PERMIT NO. 2176-s41S BY)
FRED D. COLVER)

PROPOSAL FOR DECISION

Please be advised that the following paragraph was inadvertently omitted from the Proposal for Decision in the above matter, as dated on February 26, 1975, by James Lewis, the Hearing Examiner.

NOTICE: This is a Proposed Order and will become final when accepted by the Administrator of the Water Resources Division of the Department of Natural Resources and Conservation. Written exceptions to the proposed order shall be filed with the Department within ten (10) days of service upon the parties herein. Upon receipt of any written exceptions, opportunity will be provided to file briefs and to make oral arguments before the Administrator of the Water Resources Division.

Done this twenty-eighth day of February, 1975



Ronald J. Guse, Assistant Chief
Water Rights Bureau

CASE # 2176